



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2022-0150; FF09E21000 FXES11130900000234]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for Three Petitions To Delist the Grizzly Bear in the Lower-48 States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition findings and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce three 90-day findings on petitions to delist the grizzly bear in the lower-48 States (*Ursus arctos horribilis*) under the Endangered Species Act of 1973, as amended (Act). One petition requests delisting the grizzly bear in the lower-48 States, and the other two petitions request delisting populations in two specific ecosystems, the Northern Continental Divide Ecosystem (NCDE) and the Greater Yellowstone Ecosystem (GYE). Based on our review, we find that the petitions pertaining to the two ecosystems present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate a status review to determine whether the petitioned actions are warranted. To ensure that the status review is comprehensive, we are requesting new scientific and commercial data and other information regarding the grizzly bear in the NCDE and GYE and factors that may affect its status in those ecosystems, including the adequacy of existing regulatory mechanisms to address threats now and in the foreseeable future. Based on the status review, we will issue a 12-month petition finding, which will address whether or not the petitioned actions are warranted, in accordance with the Act. If we ultimately do find that one or more of the petitioned actions is warranted and proceed to

propose to delist one or more distinct population segments (DPSs), we will consider the effects of any proposed delisting on the ongoing recovery of the larger listed entity of grizzly bears. We also found that a petition to delist the grizzly bear in the lower-48 states on the basis of it not being a valid listable entity did not present substantial scientific or commercial information indicating that the petitioned actions may be warranted; therefore, we will take no further action on that petition.

DATES: The findings announced in this document were made on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Supporting documents:* A summary of the basis for the petition findings contained in this document is available on <https://www.regulations.gov> in Docket No. FWS-R6-ES-2022-0150. In addition, this supporting information is available by contacting the person specified in **FOR FURTHER INFORMATION CONTACT**.

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the grizzly bear in the NCDE and GYE or its habitats, particularly new information available since our March 30, 2021, 5-year status review, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<https://www.regulations.gov>. In the Search box, enter FWS-R6-ES-2022-0150, which is the docket number for this action. Then, click on the “Search” button. After finding the correct document, you may submit information by clicking on “Comment.” If your information will fit in the provided comment box, please use this feature of <https://www.regulations.gov>, as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy*: Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R6-ES-2022-0150, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. Any information we receive during the course of our status review will be considered, and we will post all information we receive on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Hilary Cooley, Grizzly Bear Recovery Coordinator, Grizzly Bear Recovery Office, telephone: 406–243–4903, email: hilary_cooley@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Information Submitted for a Status Review

You may submit your comments and materials concerning the status of, or threats to, the grizzly bear in the NCDE and GYE or its habitats, by one of the methods listed above in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this

information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing these findings, will be available for public inspection on <https://www.regulations.gov>.

Background

Section 4 of the Act (16 U.S.C. 1533 et seq.) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the Lists (i.e., “list” a species), remove a species from the Lists (i.e., “delist” a species), or change a listed species’ status from endangered to threatened or from threatened to endangered (i.e., “reclassify” a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the *Federal Register*.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); and

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition, or the action or condition itself.

However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in a petition to delist a species must include evidence sufficient to suggest that these threats may no longer be affecting the species to the point that the species may no longer meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and

species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act. If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review.

History of the Petitions Received

On December 17, 2021, we received a petition from the State of Montana to designate and delist a Northern Continental Divide Ecosystem distinct population segment (DPS) of the grizzly bear under the Act. The NCDE occurs only in Montana. On January 21, 2022, we received a petition from the State of Wyoming to designate and delist a Greater Yellowstone Ecosystem DPS of the grizzly bear under the Act. The GYE occurs in portions of Wyoming, Montana, and Idaho. On March 9, 2022, we received a petition from the State of Idaho to delist the grizzly bear in the lower-48 States. All three petitions clearly identified themselves as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses all three petitions.

Summary of Petition Findings

Evaluation of a Petition To Designate and Delist an NCDE DPS of Grizzly Bear

The grizzly bear is currently listed in 50 CFR 17.11(h) as a threatened species in the lower-48 States (see 40 FR 31734; July 28, 1975). The State of Montana's petition requests that we designate and delist an NCDE DPS of the grizzly bear in the lower-48 States. We find that the petition presents substantial information that the NCDE may qualify as a DPS. Additionally, we find that the petition presents substantial information that the population size and trends have improved and that threats have been reduced in the NCDE such that the population may no longer meet the definition of a threatened species under the Act. Therefore, we find that the petition presents substantial information that the petitioned action, designating and then delisting an NCDE DPS, may be warranted and we will commence a status review to determine if the action is warranted. During our status review, we will fully evaluate all relevant threats and conservation actions in detail based on the best scientific and commercial data available, including newly enacted State regulations in the State of Montana, such as MCA 87–6–106. We will determine whether these and other existing state regulatory mechanisms are adequate to address the threat of increased human-caused mortality such that an affected DPS is not in danger of extinction now or likely to become so within the foreseeable future throughout all or a significant portion of its range.

Evaluation of a Petition To Designate and Delist a GYE DPS of Grizzly Bear

The State of Wyoming's petition requests that we designate and delist a GYE DPS of the grizzly bear in the lower-48 States. We find that the petition presents substantial information that the GYE may qualify as a DPS. Additionally, we find that the petition presents substantial information that the population size and trends have improved and that threats have been reduced in the GYE such that the population may no longer meet the definition of a threatened species under the Act. Therefore, we find that the petition presents substantial information that the petitioned action, designating and then

delisting a GYE DPS, may be warranted and we will commence a status review to determine if the action is warranted. Our status review will evaluate all relevant threats and conservation actions in detail based on the best scientific and commercial data available, including whether existing state regulatory mechanisms, such as controls on human-caused mortality or implementation of recalibration, are adequate to support a finding that a GYE DPS is not in danger of extinction now or likely to become so within the foreseeable future throughout all or a significant portion of its range.

Evaluation of a Petition To Delist the Grizzly Bear in the Lower-48 States

The State of Idaho's petition requests that we delist the grizzly bear in the lower-48 States. The petition asserts that the currently listed entity, the grizzly bear in the lower-48 States is not a valid DPS and, therefore, does not meet the Act's definition of a "species" and it should be delisted on that basis. The petitioner did not make any claims related to the biological status of or threats to the grizzly bear in the lower-48 States. Specifically, the petitioner claims that the listed entity: (1) does not identify a grizzly bear population; (2) does not identify a population that interbreeds when mature; and (3) is not discrete from grizzly bears in Canada. As summarized in our petition response form, the petitioner failed to present any credible scientific or commercial information with respect to certain claims; therefore, we do not consider the petition to present substantial information supporting those claims. With respect to the remaining claims, for the reasons discussed in our petition response form we conclude that the petitioner failed to present credible scientific or commercial information such that a reasonable person conducting an impartial scientific review would conclude that removing the grizzly bear in the lower-48 States from the List of Endangered and Threatened Wildlife may be warranted. Therefore, we find that the petition does not provide substantial information that the petitioned action may be warranted.

Evaluation of Information Summary and Finding

We reviewed the petitions, sources cited in the petitions, and other readily available information. We considered the factors under section 4(a)(1) of the Act and assessed the effect that the threats identified within the factors may have on the grizzly bear in the lower-48 States now and in the foreseeable future. We also considered existing regulatory mechanisms or conservation efforts that may ameliorate, reduce, or exacerbate the threats. Based on our review of the petitions and readily available information regarding the improvement in condition and reduction of threats in the NCDE and GYE, we find that the two petitions concerning the NCDE and GYE present credible and substantial information that the petitioned actions may be warranted.

We appreciate the three States' historical commitment to recover grizzly bears, particularly conflict prevention efforts that have been effective in reducing human-caused mortality, and we hope that these efforts will continue and expand as needed to provide for effective management of these populations in the future. Although notable progress has been made to address deficiencies in future state management identified by the courts, the impact of recently enacted state statutes affecting these two grizzly bear populations is of concern and will require careful consideration. We will fully evaluate these and all other potential threats and associated state regulatory mechanisms, as well as the validity of each DPS, in detail based on the best scientific and commercial data available when we conduct the status assessment and make the 12-month finding.

In accordance with the requirements of the statute, our 12-month findings on the two petitions to identify and delist DPSs (the NCDE and GYE) will be based upon the best scientific and commercial data available and will not be limited to the information presented in the petitions. Similarly, if we make one or more "warranted" 12-month findings, we will identify the DPS or DPSs in that finding on the basis of the best scientific and commercial data available; we will not be limited to the possible DPSs described in the petitions. If we ultimately do find that one or more of the petitioned

actions is warranted and proceed to propose to delist one or more DPSs, we will consider the effects of any proposed delisting on the ongoing recovery of the larger listed entity of grizzly bears.

Finally, we find that the petition from the State of Idaho does not present substantial information that the grizzly bear in the lower-48 States is not a valid “species” as defined by the Act.

The basis for our finding on these petitions, and other information regarding our review of the petitions, including the 2011 and 2021 5-year status reviews, can be found at <https://www.regulations.gov> under Docket No. FWS-R6-ES-2022-0150 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under sections 4(b)(3)(A) and 4(b)(3)(D)(i) of the Act, we have determined that two of the three petitions summarized above for the grizzly bear in the lower-48 States present substantial scientific or commercial information indicating that the petitioned actions for the GYE and the NCDE may be warranted. We are, therefore, initiating a status review of the grizzly bear in the GYE and NCDE to determine whether the actions are warranted under the Act. At the conclusion of the status review, we will issue a finding, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether other species are an endangered or threatened species.

Authors

The primary authors of this document are staff members of the Grizzly Bear Recovery Office, Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as

amended (16 U.S.C. 1531 et seq.).

Signed: _____

Martha Williams,

Director,

U.S. Fish and Wildlife Service.

[FR Doc. 2023-02467 Filed: 2/3/2023 8:45 am; Publication Date: 2/6/2023]